IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO.771 OF 1987

P.M. Benefit Trust & Ors. ..Plaintiffs.

Vs.

Standards Graphics & Ors. ..Defendants.

...

Mr. Vinod Thakur i/b V. Thakur & Co. for the Plaintiffs.

CORAM: DR. D.Y. CHANDRACHUD, J.

24th August, 2006.

P.C. :

1. The suit has been instituted by the Plaintiffs for the recovery of a sum of Rs.61,125/- as per the particulars of claim marked as Exh. I together with further interest on the principal sum of Rs.55,376/- at the rate of 6% per annum from the date of the institution of the suit till the date of the decree and at the rate of 18% per annum from the date of the decree until payment or realization. On the request of the Defendants, the Plaintiffs sold, supplied and delivered Aluminum Plates under Bill Nos.56, 61, 65, 71 and 79 respectively dated 27th January, 1984, 8th February, 1984, 16th February, 1984, 28th February, 1984 and 20th March, 1984 aggregating in all to Rs.55,376/-. The Defendants failed to

make the payment within a period of 15 days as required. A notice of demand was addressed on 17th February, 1986. In reply thereto the Defendants by their advocate's letter dated 12th March, 1986 claimed that the Plaintiffs were liable to pay to the Defendants commission/ royalty and further discount on the entire sale of the Plaintiffs. The Plaintiffs by their advocate's letter dated 7th April, 1986 denied the claim of the Defendants to royalty and of further discount.

2. No written statement has been filed by the Defendants. The Plaintiffs have filed an affidavit in lieu of the examination-in-chief of the Second Plaintiff who is one of the trustees of the First Plaintiff. The Plaintiffs have sought permission to lead secondary evidence of the delivery challans which are stated to have been misplaced. However, it has been stated that on the receipt of the original acknowledged challans against the delivery of goods, the Second Plaintiff had made a photocopy of the challans. In these circumstances, permission to lead secondary evidence was granted. Counsel appearing for the Plaintiffs has tendered a compilation of documents which is taken on the record. There is no defence to the suit. Counsel appearing for the Plaintiffs has

drawn the attention of the Court to Exh.BB in the list of documents. It appears therefrom that on 4th August, 2006 the Plaintiffs had accepted an amount of Rs.50,000/- from the Second Defendant who was a partner of the First Defendant in full and final settlement of the liability of the Second Defendant. In these circumstances, it has been stated that no claim shall be pursued in execution as against the Second Defendant in view of the agreement between the Plaintiff and the Second Defendant as reflected in the document dated 4th August, 2006.

3. The suit is accordingly decreed against the First and the Third Defendants in the sum of Rs.61,125/-. The Plaintiffs would be entitled to interest at the rate of 6% per annum from the date of the institution of the suit until payment or realization. The Plaintiffs shall, however, give credit for the amount of Rs.50,000/- which has been received from the Second Defendant, in computing the decretal dues.